



House of Representatives

General Assembly

File No. 345

February Session, 2008

Substitute House Bill No. 5715

House of Representatives, April 1, 2008

The Committee on Planning and Development reported through REP. FELTMAN of the 6th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING ABATEMENT OF PUBLIC NUISANCES BY MUNICIPALITIES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 19a-343 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2008*):

3 (a) For the purposes of sections 19a-343 to 19a-343h, inclusive, as
4 amended by this act, a person creates or maintains a public nuisance if
5 such person erects, establishes, maintains, uses, owns or leases any real
6 property or portion thereof for any of the purposes enumerated in
7 subdivisions (1) to [(11)] (9), inclusive, of subsection (c) of this section.

8 (b) The state [has the exclusive right to] may bring an action to abate
9 a public nuisance under this section and sections 19a-343a to 19a-343h,
10 inclusive, as amended by this act, involving any commercial real
11 property or portion thereof, [commercial or residential, including
12 single or multifamily dwellings,] provided there have been three or

13 more [arrests, or the issuance of three or more arrest warrants]
14 convictions for violations in separate incidents indicating a pattern of
15 criminal activity and not isolated incidents, for conduct on the
16 property documented by a law enforcement officer for any of the
17 offenses enumerated in subdivisions (1) to [(11)] (9), inclusive, of
18 subsection (c) of this section within the three hundred sixty-five days
19 preceding commencement of the action. The municipality in which
20 such property is located may also bring such action under said sections
21 19a-343a to 19a-343h, inclusive.

22 (c) Three or more [arrests, or the issuance of three or more arrest
23 warrants] convictions for violations in separate incidents indicating a
24 pattern of criminal activity and not isolated incidents, for the following
25 offenses shall constitute the basis for bringing an action to abate a
26 public nuisance:

27 (1) Prostitution under section 53a-82, 53a-83, 53a-86, 53a-87, 53a-88
28 or 53a-89.

29 [(2) Promoting an obscene performance or obscene material under
30 section 53a-196 or 53a-196b, employing a minor in an obscene
31 performance under section 53a-196a, importing child pornography
32 under section 53a-196c, possessing child pornography in the first
33 degree under section 53a-196d, possessing child pornography in the
34 second degree under section 53a-196e or possessing child pornography
35 in the third degree under section 53a-196f.]

36 [(3)] (2) Transmission of gambling information under section
37 53-278b or 53-278d or maintaining of a gambling premises under
38 section 53-278e.

39 [(4)] (3) Offenses for the sale of controlled substances, possession of
40 controlled substances with intent to sell, or maintaining a drug factory
41 under section 21a-277, 21a-278 of the 2008 supplement to the general
42 statutes or 21a-278a or use of the property by persons possessing
43 controlled substances under section 21a-279. Nothing in this section
44 shall prevent the state from also proceeding against property under

45 section 21a-259 or 54-36h.

46 [(5)] (4) Unauthorized sale of alcoholic liquor under section 30-74 or
47 disposing of liquor without a permit under section 30-77.

48 [(6)] Violations of the inciting injury to persons or property law
49 under section 53a-179a.]

50 [(7)] (5) Maintaining a motor vehicle chop shop under section
51 14-149a.

52 [(8)] (6) Murder or manslaughter under section 53a-54a, 53a-54b,
53 53a-55, 53a-56 or 53a-56a.

54 [(9)] (7) Assault under section 53a-59, 53a-59a, subdivision (1) of
55 subsection (a) of section 53a-60 or section 53a-60a.

56 [(10)] (8) Sexual assault under section 53a-70 or 53a-70a.

57 [(11)] (9) Fire safety violations under section 29-292, subsection (b)
58 of section 29-310, or section 29-315, 29-317, 29-320, 29-325, 29-329, 29-
59 337, 29-349 of the 2008 supplement to the general statutes or 29-357 of
60 the 2008 supplement to the general statutes.

61 Sec. 2. Section 19a-343a of the general statutes is repealed and the
62 following is substituted in lieu thereof (*Effective October 1, 2008*):

63 (a) The Chief State's Attorney or a deputy chief state's attorney,
64 state's attorney or assistant or deputy assistant state's attorney or an
65 attorney for a municipality desiring to commence an action to abate a
66 public nuisance shall attach his proposed unsigned writ, summons and
67 complaint to the following documents:

68 (1) An application directed to the Superior Court to which the action
69 is made returnable, for the remedies requested to abate the public
70 nuisance; and

71 (2) An affidavit sworn to by the state or municipality or any
72 competent affiant setting forth a statement of facts showing by

73 probable cause the existence of a public nuisance upon the real
74 property or any portion thereof.

75 (b) The court, or if the court is not in session, any judge of the
76 Superior Court, may order that a show cause hearing be held before
77 the court or a judge thereof to determine whether or not the temporary
78 relief requested should be granted and the court shall direct the state
79 or municipality to give notice to any defendant of the pendency of the
80 application and of the time when it will be heard by causing a true and
81 attested copy of the application, the proposed unsigned writ,
82 summons, complaint, affidavit and of its order to be served upon the
83 defendant by some proper officer or indifferent person. Such hearing
84 shall be scheduled within ten days after service is effected by the state
85 or municipality.

86 (c) If in the application, the state or municipality requests the
87 issuance of a temporary ex parte order for the abatement of a public
88 nuisance, the court, or if the court is not in session, any judge of the
89 Superior Court, may grant a temporary ex parte order to abate the
90 public nuisance. The court or judge shall direct the state or
91 municipality to give notice and service of such documents, including a
92 copy of the ex parte order, in accordance with subsection (b) of this
93 section. At such hearing, any defendant may show cause why the
94 abatement order shall be modified or vacated. No such ex parte order
95 may be granted unless it appears from the specific facts shown by
96 affidavit and by complaint that there is probable cause to believe that a
97 public nuisance exists and the temporary relief requested is necessary
98 to protect the public health, welfare or safety. Such show cause hearing
99 shall be scheduled within five business days after service is effected by
100 the state or municipality. The affidavit may be ordered sealed by the
101 court or judge upon a finding that the state's or municipality's interest
102 in nondisclosure substantially outweighs the defendant's right to
103 disclosure. A copy of the state's or municipality's application and the
104 temporary order to cease and desist shall be posted on any outside
105 door to any building on the real property.

106 (d) Such a public nuisance proceeding shall be deemed a civil action
107 and venue shall lie in the superior court for the judicial district within
108 which the real property alleged to constitute a public nuisance is
109 located. Service shall be made in accordance with chapter 896. In
110 addition, service of process may be made by an inspector of the
111 Division of Criminal Justice or sworn member of a local police
112 department or the Division of State Police.

113 (e) At the show cause hearing, the court shall determine whether
114 there is probable cause to believe that a public nuisance exists, and that
115 the circumstances demand the temporary relief requested be ordered,
116 or the temporary ex parte order be continued during the pendency of
117 the public nuisance proceeding. The court may, upon motion by the
118 state, municipality or any defendant, enter such orders as justice
119 requires. The court shall schedule the evidentiary hearing within
120 ninety days from the show cause hearing.

121 (f) The record owner of the real property, any person claiming an
122 interest of record pursuant to a bona fide mortgage, assignment of
123 lease or rent, lien or security in the property and any lessee or tenant
124 whose conduct is alleged to have contributed to the public nuisance
125 shall be made a defendant to the action, except that the state or
126 municipality shall exempt as a defendant any owner, lienholder,
127 assignee, lessee, tenant or resident who cooperates with the state or
128 municipality in making bona fide efforts to abate the nuisance or any
129 tenant or resident who has been factually uninvolved in the conduct
130 contributing to such public nuisance. If the state or municipality
131 exempts as a defendant any record owner or any person claiming an
132 interest of record pursuant to a mortgage, assignment of lease or rent,
133 lien or security in the property, notice of the commencement of a
134 nuisance proceeding shall be given by certified mail, return receipt
135 requested, with a copy of such summons and complaint and a notice of
136 exemption and right to be added as a party to any such person at his
137 usual place of abode or business. Any such exempted person may, at
138 his option, enter an appearance and participate in the nuisance
139 proceeding to protect his property rights. Notice of the commencement

140 of such a public nuisance proceeding shall be given by certified mail to
141 the highest elected official of the municipality in which the real
142 property is located.

143 (g) If the defendant is a financial institution and the record owner of
144 the real property, or if the defendant is a financial institution claiming
145 an interest of record pursuant to a bona fide mortgage, assignment of
146 lease or rent, lien or security in the real property and is not determined
147 to be a principal or an accomplice in the conduct constituting the
148 public nuisance, the court shall not enter any order against such
149 defendant. The state or municipality shall have the burden of proving
150 by clear and convincing evidence that any such defendant claiming an
151 interest of record under this subsection is a principal or an accomplice
152 in the alleged conduct constituting the public nuisance. For the
153 purposes of this subsection, "financial institution" means a bank, as
154 defined in subdivision (4) of section 36a-2, an out-of-state bank, as
155 defined in subdivision (44) of section 36a-2, an institutional lender or
156 any subsidiary or affiliate of such bank, out-of-state bank or
157 institutional lender that directly or indirectly acquires the real property
158 pursuant to strict foreclosure, foreclosure by sale or deed-in-lieu of
159 foreclosure, and with the intent of ultimately transferring the property,
160 or other lender licensed by the Department of Banking.

161 (h) For any defendant who fails to appear, the court may enter a
162 default following an evidentiary showing by the state or municipality
163 in support of the relief requested, which shall include affidavits or the
164 testimony of witnesses. When the court enters a judgment upon
165 default, the court may enter such orders as appear reasonably
166 necessary to abate the public nuisance.

167 (i) At the evidentiary hearing upon the public nuisance complaint,
168 the state or municipality shall have the burden of proving, by clear and
169 convincing evidence, the existence of a public nuisance upon the real
170 property as provided in section 19a-343, as amended by this act. If the
171 state or municipality presents clear and convincing evidence that there
172 have been [three] two or more [arrests, or the issuance of three or more

173 arrest warrants] convictions indicating a pattern of criminal activity
174 and not isolated incidents, for conduct on the real property or any
175 portion thereof documented by a law enforcement officer for any of
176 the offenses enumerated in subdivisions (1) to [(11)] (9), inclusive, of
177 subsection (c) of section 19a-343, as amended by this act, within the
178 three hundred sixty-five days preceding commencement of the action,
179 such evidence shall create a rebuttable presumption of the existence of
180 a public nuisance. Any defendant may offer evidence by way of an
181 affirmative defense that such defendant has taken reasonable steps to
182 abate the public nuisance, but has been unable to abate the nuisance.

183 Sec. 3. Section 19a-343b of the general statutes is repealed and the
184 following is substituted in lieu thereof (*Effective October 1, 2008*):

185 In any proceeding to abate a public nuisance, the state or
186 municipality may request such remedies or relief as are reasonably
187 necessary to abate the nuisance including, but not limited to, orders for
188 repair or alteration to the real property or any portion thereof,
189 temporary orders to cease and desist, orders to cease and desist or
190 appointment of a receiver of rents. In any such action, the court may
191 enter any orders necessary and proper to abate the nuisance.

192 Sec. 4. Section 19a-343d of the general statutes is repealed and the
193 following is substituted in lieu thereof (*Effective October 1, 2008*):

194 (a) The court may, upon application of the state or municipality,
195 appoint a receiver to operate and manage the property or any portion
196 thereof in accordance with the provisions of this section during the
197 pendency of the public nuisance proceeding and shall include such
198 powers and duties as the court may direct.

199 (b) The receiver shall with all reasonable speed, remove the
200 delinquent matters and deficiencies in the property or any portion
201 thereof constituting a serious fire hazard or a serious threat to life,
202 health or safety. During the term of the receivership, the receiver shall
203 repair and maintain the property or any portion thereof in a safe and
204 healthful condition. The receiver shall have the power to let contracts

205 therefor in accordance with the provisions of local laws, ordinances,
206 rules and regulations. Notwithstanding any such laws, ordinances,
207 rules or regulations, the receiver may let contracts or incur expenses
208 for individual items of repairs, improvements or supplies without
209 advertisement or the procurement of competitive bids where the total
210 amount of any such individual item does not exceed five hundred
211 dollars or where there exists a condition which constitutes an
212 imminent and substantial danger to life, health or safety, but in such
213 event the receiver shall endeavor to obtain contracts on the most
214 advantageous terms.

215 (c) The receiver shall collect the accrued and accruing rents, issues
216 and profits of the property or any portion thereof and apply the same
217 to the cost of removing or remedying such nuisance, to the payment of
218 expenses reasonably necessary to the proper operation and
219 management of the property, including insurance and the fees of the
220 managing agent, if any, and to unpaid taxes, assessments, water rents
221 and sewer rents and penalties and interest thereon.

222 (d) Any excess of income of the property in the hands of the receiver
223 shall be applied to the necessary expenses in regard to such property
224 of his office as receiver and then to sums due to mortgagees or lienors.

225 (e) The receiver shall have the power to bring a summary process
226 action pursuant to the provisions of chapter 832 against any tenant or
227 occupant of the property.

228 (f) Following appointment, the receiver shall keep complete written
229 records, including records of all receivership funds on deposit and
230 records itemizing all receipts and expenditures.

231 (g) The receiver's accounts shall be open to inspection by any
232 defendant having an ownership interest in the real property, the state,
233 the municipality, the court or any defendant with a record interest in
234 the leases or rents.

235 (h) Upon motion by any defendant having an interest in the real

236 property, ~~[or] the state or the municipality,~~ or upon its own motion,
237 the court may direct the receiver to render a periodic accounting to the
238 court.

239 (i) A receiver shall act until removed by the court. Upon the
240 termination of the receivership, the receiver shall render to the court a
241 final accounting of all funds pertaining to the real property on deposit,
242 as well as records of receipts and expenditures. The receiver shall
243 deliver ledgers, records and the receiver's files and notes pertaining to
244 any litigation or claim arising out of management of the real property
245 to any person designated by the court.

246 (j) A receiver appointed pursuant to this section shall not be liable in
247 his capacity as receiver to any person except for intentional or wilful
248 misconduct.

249 Sec. 5. Section 19a-343e of the general statutes is repealed and the
250 following is substituted in lieu thereof (*Effective October 1, 2008*):

251 (a) If the court finds by clear and convincing evidence that a public
252 nuisance exists, the court may enter such orders as justice requires to
253 abate the public nuisance, including but not limited to, an order to
254 close the real property or any portion thereof. The court or judge shall
255 give notice and an opportunity to contest such order. The court shall
256 retain jurisdiction over the case until it appears that the nuisance no
257 longer exists. The state or municipality shall post a copy of any court
258 order to close the real property or any portion thereof on any outside
259 door of the premises. The order shall include a notice that any person
260 who removes, mutilates or defaces the closing order may be punished,
261 upon conviction, by a fine not to exceed two hundred fifty dollars or
262 by imprisonment of fifteen days, or both.

263 (b) At any time after entry of an order, any defendant may apply to
264 the court to have any order vacated or modified for good cause. Prior
265 to any decision on a defendant's application to vacate or modify an
266 order, the state or municipality shall be afforded a reasonable
267 opportunity to inspect the real property or any portion thereof to

268 verify that the public nuisance has been abated, and the court shall
269 provide the state or municipality with an opportunity to be heard to
270 contest the defendant's application.

271 (c) Where the court vacates or modifies any order, it may condition
272 its decision on the posting of a bond in an amount not to exceed the
273 current fair market value of the real property, as stated in an
274 independent appraisal by a certified real estate appraiser, as surety
275 against recurrence of the public nuisance.

276 (d) Where the court finds that real property or any portion thereof
277 constitutes a public nuisance and enters a final judgment, the state or
278 municipality shall record a copy of such judgment and any orders on
279 the land records in the town in which such real property is located. At
280 any time after the entry of judgment, any defendant may apply to the
281 court to modify or vacate any order, including the reduction of the
282 amount of, or release of liability for any bond required pursuant to this
283 section. The court may grant such application for good cause shown,
284 which may include, but not be limited to, a showing by such defendant
285 by clear and convincing evidence that: (1) All court orders have been
286 complied with, that any named persons have ceased any conduct
287 constituting a public nuisance upon the real property or any portion
288 thereof and that the nuisance has abated; (2) the defendant wishes to
289 refinance or sell the real property to an identified bona fide purchaser
290 for value whose proposed use for the real property will not constitute
291 a public nuisance; or (3) the defendant has demolished or razed any
292 buildings, structures or features upon the real property capable of
293 supporting a public nuisance. Prior to any decision on a defendant's
294 application to vacate or modify a final order or release a lien, the state
295 or municipality shall be afforded a reasonable opportunity to inspect
296 the real property or any portion thereof. Any modification to any order
297 shall be recorded on the land records in the town in which such real
298 property is located.

299 (e) Where the state or municipality applies for an order to close the
300 real property or any portion thereof, the court shall take into

301 consideration the rights of all interested parties and shall limit the
302 scope of a closing order to minimize dispossession or dislocation of
303 tenants or residents who have been factually uninvolved in the
304 conduct contributing to the public nuisance, unless closure of the
305 property is necessary to protect public health, safety or welfare.

306 Sec. 6. Section 19a-343f of the general statutes is repealed and the
307 following is substituted in lieu thereof (*Effective October 1, 2008*):

308 (a) In any case where dispossession or dislocation of tenants or
309 residents who have been factually uninvolved with the conduct
310 contributing to such public nuisance is necessary to abate the public
311 nuisance, the court may impose the reasonable costs of relocating such
312 tenants or residents upon any defendant determined by the court to be
313 liable for the public nuisance.

314 (b) In any public nuisance proceeding, the court may impose the
315 reasonable costs of investigation, prosecution and any extraordinary
316 expenses incurred in abating the public nuisance upon any defendant
317 determined by the court to be liable for the public nuisance. In any
318 public nuisance proceeding, the court may award to the state or any
319 municipality the reasonable costs of investigation, prosecution and any
320 extraordinary expenses incurred in abating the public nuisance. The
321 state or municipality shall submit an affidavit and such other
322 documents as the court directs in support of a request for award of
323 costs.

324 (c) The court may authorize the state or municipality or its agents to
325 make any repairs or alterations to the real property or any portion
326 thereof to bring it into compliance with applicable state and local
327 building, fire, health, housing or similar codes. The court may impose
328 the actual costs of any repairs or alterations upon any defendant
329 determined by the court to be liable for the public nuisance. The court
330 shall award the state or municipality the actual costs of any such
331 repairs or alterations.

332 (d) In any public nuisance proceeding, any monetary penalty

333 imposed by the court on a defendant with an ownership interest in the
334 real property and any award of costs to the state or municipality shall
335 constitute a judgment lien on the real property, and shall be recorded
336 as such on the land records in the town where the property is located.
337 In addition, the state or municipality may, at its election, pursue any
338 remedy under chapter 906.

339 (e) If any defendant in a public nuisance proceeding subject to a
340 court order to abate the nuisance intentionally violates any such court
341 order entered in judgment in a public nuisance proceeding under
342 sections 19a-343 to 19a-343h, inclusive, as amended by this act, the
343 court may impose a civil penalty of not more than one thousand
344 dollars for each day the public nuisance is found to have existed after
345 such order. Upon recovery, such penalty shall be deposited in the
346 General Fund.

347 (f) Any person who was not a defendant in a public nuisance action
348 who intentionally violates any court order entered in judgment in a
349 public nuisance proceeding, may be fined not more than one hundred
350 dollars or imprisoned not more than six months or both.

351 Sec. 7. Section 19a-343g of the general statutes is repealed and the
352 following is substituted in lieu thereof (*Effective October 1, 2008*):

353 (a) The state or municipality may use an inspector of the Division of
354 Criminal Justice or a state or municipal police officer to assist in the
355 enforcement of any court order in a public nuisance proceeding.
356 Where a municipal police officer acts at the direction of a prosecutor,
357 the state shall first obtain the permission of the municipal chief of
358 police. Where a municipal police officer acts at the direction of a
359 prosecutor or pursuant to a court order in a public nuisance matter, the
360 officer and the municipality shall be indemnified against any losses,
361 damages or liabilities arising within the scope of such duties, and the
362 police officer shall be deemed an employee of the state for purposes of
363 indemnification.

364 (b) In any public nuisance proceeding, an order by the court closing

365 the real property or any portion thereof shall not be deemed to pass
366 dominion, title, possession or control over the real property to the state
367 or municipality.

368 Sec. 8. Section 19a-343h of the general statutes is repealed and the
369 following is substituted in lieu thereof (*Effective October 1, 2008*):

370 Availability to the state or municipality of other remedies at law or
371 equity shall not prevent the granting of relief under sections 19a-343 to
372 19a-343h, inclusive, as amended by this act.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2008</i>	19a-343
Sec. 2	<i>October 1, 2008</i>	19a-343a
Sec. 3	<i>October 1, 2008</i>	19a-343b
Sec. 4	<i>October 1, 2008</i>	19a-343d
Sec. 5	<i>October 1, 2008</i>	19a-343e
Sec. 6	<i>October 1, 2008</i>	19a-343f
Sec. 7	<i>October 1, 2008</i>	19a-343g
Sec. 8	<i>October 1, 2008</i>	19a-343h

PD *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill narrows the scope of the state's nuisance abatement law. State's attorneys enforce this law through civil actions. To the extent that the bill reduces the number of civil actions brought by state's attorneys, the workload of attorneys responsible for enforcement of this law would decrease. Any decrease is not expected to generate state savings since relatively few such cases are brought (seven in Calendar Year 2007).

The bill permits attorneys for municipalities to bring civil suits to enforce the nuisance abatement law. As this provision is permissive, any fiscal impact to municipalities could be accommodated within existing resources.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sHB 5715*****AN ACT CONCERNING ABATEMENT OF PUBLIC NUISANCES BY MUNICIPALITIES.*****SUMMARY:**

This bill narrows the scope of a law that allows state's attorneys to file civil suits, and the Superior Court to order various forms of relief, when three or more arrests for certain crimes have been made on a piece of property within one year. It does so by:

1. limiting the law to apply just to crimes occurring on commercial property, rather than commercial and residential property;
2. eliminating one of the types of crimes that can prompt the suits; and
3. requiring that there be three convictions for violations of the specified crimes in separate incidents, rather than three or more arrests or the issuance of three or more arrest warrants for violations of these laws.

The bill also modifies when there is a rebuttable presumption that there is a public nuisance arising from the pattern of criminal activity. And it requires the court or judge hearing the case to give the defendant notice and an opportunity to contest its orders.

Under current law, only the state can bring suits under these provisions. The bill allows an attorney for a municipality to do so, subject to the same requirements as the state.

EFFECTIVE DATE: October 1, 2008

PATTERNS OF CRIMINAL ACTIVITY

Current law addresses patterns of criminal activity involving 11 types of crime. The bill eliminates one of these types dealing with obscenity, specifically the offenses of (1) promoting an obscene performance; or obscene material; (2) employing a minor in an obscene performance, (3) importing child pornography; and (4) possessing child pornography in the first, second, or third degree. The bill also eliminates a reference to a crime that no longer exists (inciting injury to persons or property). The remaining crimes are:

1. prostitution;
2. transmitting gambling information or maintaining gambling premises;
3. selling, possessing with intent to sell, or producing illegal drugs;
4. selling liquor illegally, or disposing of liquor without a permit;
5. running a vehicle chop shop;
6. murder or manslaughter;
7. assault;
8. sexual assault; and
9. fire safety violations.

Rebuttable Presumption

Under current law, the state has the burden of proving, by clear and convincing evidence, the existence of the public nuisance at the evidentiary hearing on the complaint. Also there is a rebuttable presumption that the nuisance exists if the state presents such evidence that there have been three or more arrests or arrest warrants issued for the enumerated crimes within the prior 365 days. Under the bill, the rebuttable presumption is evidence of two or more convictions for the offenses during this period.

Opportunity to Contest Court Order

By law, if the court finds that a public nuisance exists, it can issue an order to close the property or other orders as justice requires. The bill requires the court or judge to give notice and an opportunity to contest the order.

MUNICIPAL SUITS

Under the bill, the same procedures apply to municipal suits as state suits, and municipalities have the same options and powers as the state.

BACKGROUND

The state may apply to the Superior Court where the property is located for orders to abate (“stop”) the nuisance. It may request that the court (or any Superior Court judge if the court is not in session) immediately issue a temporary “ex parte” order when its sworn complaint and affidavit show that the nuisance poses a clear and present danger to the public health, safety, or morals.

The court must hold a hearing (1) within five business days after the defendants are served, if it has entered an ex parte order, or (2) within 10 days of service otherwise. At the hearing, it must decide whether any existing ex parte order should remain in place and whether other temporary orders should be entered. Such orders may (1) require repairs or alterations of the property or the appointment of a receiver to operate and manage it or (2) direct defendants to take action to stop objectionable activities.

At the state’s request, the court may appoint a receiver to manage and operate the property while a nuisance action is pending. It must require him or her to:

1. remove fire hazards or conditions on the property that pose a serious threat to life, health, or safety;
2. repair and maintain the property;
3. collect rents, issues, and profits and apply them to (a) the costs

of abating the nuisance; (b) reasonable operation and management expenses; and (c) unpaid taxes, assessments, water and sewer rents, and penalties and interest owed on them;

4. apply any excess income from the property first towards his or her own expenses, and then toward money owed under mortgages or liens; and
5. allow him or her to (a) use the locality's competitive bidding procedures for non-emergency maintenance and repairs costing \$500 or more, and try to get the best terms for emergency repairs and work costing under \$500 and (b) evict tenants and occupants, following existing laws.

In addition to temporary orders, the court may issue the following.

Default Judgments. The court may enter a default judgment and issue abatement orders against a defendant who does not appear in court to defend himself. But the state must first present evidence showing that the relief requested is necessary.

Closings. The court may order the closing of a property, or some part of it. But before doing so, it must consider the rights of all interested parties. It must also limit its order to minimize the dispossession and dislocation of innocent occupants, unless closure is necessary to protect public health, safety, or welfare. It may order any defendant who is liable for the nuisance to pay the displaced residents' moving costs.

The state must post the closure order on any outside door of the premises. The order must include a notice that its removal, mutilation, or defacement is punishable by 15 days in prison, a fine of up to \$250, or both.

Closure orders do not give the state legal ownership, possession, or control of the property.

Repairs or Alterations. The court may authorize the state (or someone

it hires) to bring the property into compliance with state and local building, fire, health, housing, or similar codes. It must award the state the costs of doing so and may order any liable defendant to pay them.

Costs. The court may award the state, any municipality, or any law enforcement agency its investigation and prosecution costs and any extraordinary expenses it incurred in stopping the nuisance. The government unit or agency must give the court an affidavit and any documents it requests. The court may order any defendant who took part or assisted in creating the nuisance to pay these costs.

The court may impose a civil fine of \$1,000 on any defendant who intentionally violates a final order. It may impose a separate fine for each day the nuisance continues after the entry of the court's order. The money collected must be deposited in the General Fund.

Intentional violations by non-defendants may be punished by a fine of up to \$100, imprisonment for up to six months, or both.

COMMITTEE ACTION

Planning and Development Committee

Joint Favorable Substitute

Yea 20 Nay 0 (03/12/2008)